

The Implementation of Health BPJS Connected to Balance Principle in Economic Law and Sharia Principles

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Abstract—Article 28 H of the 1945 Constitution stipulates that everyone has the right to obtain health services. To conduct this mandate, January 1st, 2014, the government formed Health Care and Social Security Agency (BPJS). Article 29 (2) of the 1945 Constitution provides a mandate, namely that the state guarantees the independence of each population to embrace their respective religions and worship according to their religion and beliefs. For Muslims, all aspects of life are worship and therefore must comply with religious provisions. Likewise, in the implementation of Health BPJS, it conducts the governing function in the field of public services. For this reason, a study was conducted with the aim at finding the implementation of Health BPJS from balance principle in Economic Law and the organization of Health BPJS connected to sharia principles. The study was conducted by a normative juridical approach, analytical descriptive as the nature of research, secondary data, and analysis techniques of qualitative data through legal interpretation. In conclusion, the implementation of Health BPJS connected to the balance principle did not fulfill the balance principle between the interests of the parties in the agreement. Judging from sharia principle, the implementation of Health BPJS still includes elements of usury (additional), *maisir* (speculative/luck), and *gharar* (unclear things) that are prohibited in Islam.

Keywords: *BPJS, balance principle, economic law, sharia principle*

I. INTRODUCTION

Article 28 H of the 1945 Constitution stipulates that everyone has the right to obtain health services. To carry out this mandate, January 1, 2014, the government formed Health Care and Social Security Agency (BPJS/*Badan Penyelenggara Jaminan Sosial*). In line with this, article 29 (2) of the 1945 Constitution provides a mandate, namely that the state guarantees the independence of each population to embrace

their respective religions and worship according to their religion and beliefs. For Muslims, all aspects of life are worship and therefore must comply with religious provisions. Likewise, in the implementation of Health BPJS, it conducts the governing function in the field of public services.

In the implementation of BPJS as a public health management institution, there are still questionable instruments from sharia aspects, which in practice, BPJS management in Indonesia is regulated in Presidential Regulation Number 12 Year 2013 concerning Health Insurance. BPJS management functions to cover health insurance for every community recorded in BPJS participant list, and each community is required to pay a certain nominal fee. Regulations regarding the mechanism for payment of BPJS contributions are listed in Act Number 40 Year 2011 Article 17 concerning the National Social Security System (*SJSN/Sistem Jaminan Sosial Nasional*) and Law Number 24 Year 2011 concerning BPJS stipulating that each BPJS participant is required to pay dues, meaning that people or participants of social security are forced to finance the risks faced by themselves, and the state only manages these funds. Therefore, if the participants of Health BPJS do not pay contributions, they will be subject to sanctions or penalties [1].

BPJS as a health institution should be able to overcome health problems for the community, but in its implementation, unexpected phenomena appeared and occurred, for example, at the time of community claims acceptance must undergo so many difficult processes, and the giving claims complained by the public were considered unsatisfactory [1]. Additionally, in its management, unclear management occurs when a claim occurs even though the participant has not paid the entire contribution. If there is no claim during the agreement period, the contributions paid during the payment period will expire. For this reason, the study on the implementation of Health

BPJS was necessary to conduct based on the balance principle in Economic Law and sharia principles.

II. RESEARCH METHOD

This study used a normative juridical approach by reviewing or analyzing secondary data in the form of primary and secondary legal materials by understanding the law as a positive set of rules or norms in applicable legislation. Hence, this study was categorized as literature research, namely research on secondary materials [2].

The research specifications used analytical descriptive, namely research to describe current problems (actual problems) by collecting, compiling, clarifying, analyzing, and interpreting data [3]. Descriptive research aimed at describing observational data without testing hypotheses.

The type of data used in this study was secondary data, namely legislation that has relevance to the focus of discussion, and Law Number 24 Year 2011 concerning BPJS or legal documents in the form of fatwas of Indonesian Ulema Council (MUI/Majelis Ulama Indonesia). The data collection method was a literature study, namely by reviewing and analyzing the implementation of Health BPJS based on the balance principle in Economic Law and sharia principles. Data analysis method used in this study was a qualitative method.

III. DISCUSSION

A. *The Implementation of Health BPJS Based on the Balance Principle in Economic Law*

Public health issues are part of what is regulated in Islam, the state has an obligation to protect and facilitate the achievement of public health. This obligation is proven by the establishment of BPJS for the society, so that the state's obligation in protecting and facilitating public health can be conducted properly. Therefore, in implementing BPJS, the government must be able to manage BPJS institutions professionally, especially in terms of meeting the interests of the society to realize their prosperity. One of them is an agreement BPJS participants and BPJS parties. In Islam, there are principles in carrying out an agreement.

According to Prof. Juhaya S. Praja, principle is an inherent universal truth in Islamic law and becomes the starting point for its formation. The principle forms Islamic law and each of its branches. Principles of Islamic Law include general and specific principles. The former principle is the overall principle of Islamic law which is universal, while the latter is the principle of each branch of Islamic law. In formulating a law in economic law, the basic principles and starting points are economic principles. Therefore, economic principles can be formulated as follows [4]:

1) *The principle of permitted for muslims or Mubah*: The principle of permitted for Muslims is that the basic law of various types of muamalah (economics) is permissible until there is a proposition that forbids it. This means that as long as there is no proposition that prohibits it, then it can be implemented. It is explained in the rules of *Ushul Fiqh*: *Al-*

ashlu fi muamalah al-ibahah hatta yaquma ad-daliil'ala at-tahrimiha (the basic law of muamalah is permissible until there is a proposition that forbids it).

2) *The principle of benefit of mankind*: The principle of benefit of mankind means that every performed muamalah must be based on consideration of bringing benefits and goodness, and avoiding harm in human life. The benefit of life is anything that brings goodness that is useful and helpful in life.

3) *The principles of freedom and volunteering*: Every muamalah is performed freely and voluntarily without containing coercive elements. This is based on Al-Quran Surah An-Nisa (4): 29. According to M. Daud Ali, this principle implies that as long as Al-Quran and Sunnah do not regulate a civil relationship, as long as the parties are free to arrange it on the basis of each other's volunteerism.

4) *The principle of fair and balance*: This principle implies that every muamalah is performed by maintaining the principle of justice may not contain elements of deception, oppression, and opportunity taking when the other party is narrow. This principle also means that the results obtained must be balanced with the effort or work done.

The law functions to regulate and limit economic activities with the expectation of economic development and does not neglect the rights and interests of the society. Therefore, economic law is scattered in various laws and regulations originating from the Pancasila and the 1945 Constitution, and adhering to the following principles [5]:

- The principle of faith and piety towards God Almighty
- The principle of benefits
- The principle of Pancasila democracy
- The principle of fair and equitable
- The principle of balance, harmony, and suitability in life
- The principle of law
- The principle of independence
- The principle of finance
- The principle of science
- The principle of togetherness, kinship, balance, and continuity in the prosperity of the society
- The principle of economical and environmentally friendly and sustainable development
- The principle of independence with state insight

A number of principles in conducting contract become the foundation of thought and reason for opinions in the enforcement and implementation of the law of contract in Islam [6], namely:

- The principle of *illahiyyat (tauhid/monotheism)*, that is the principle of confidence in the oneness of Allah and

the realization that everything on earth and in the heavens is His.

- The principle of freedom (*hurriyah*), that is, the parties to conduct the contract have the freedom to make agreements both regarding the object of agreement and the determination of other requirements including determining resolution ways if there is a dispute.
- The principle of similarity or equality (*al-musawah*), that is, everyone has the opportunity to make an agreement on the principle of similarity and equality.
- The principle of justice (*al-alahadalah*), that is, the parties who are committed the contract are required to be right in expressing their will and condition, fulfilling the agreement that has been made, and meeting all obligations.
- The principle of willingness (*al-ridha*), that is, all transactions conducted must be carried out on the basis of equal likes or willingness of each party that shows the sincerity and good faith of each party.
- The principle of honesty and truth (*al-shidq*), that is, the parties who conduct the contract must carry out the transaction honestly and correctly.
- The written principle (*al-kitabah*), which is recommended in an engagement made in writing is attended by witnesses.

The Compilation of Sharia Economic Law (KHES/*Kompilasi Hukum Ekonomi Syariah*) stated that the contract was conducted based on several principles, including:

- *Ikhtiyari*/voluntary means that each contract is conducted at the will of the parties, avoiding being coercive because of pressure from one party or another party.
- Trustful/keep promises mean that each contract is mandatory to be conducted by the parties in accordance with the agreement established by the concerned and at the same time avoided from the promise injury.
- *Ikhtiyati*/caution means that every contract is conducted with a mature consideration and carried out precisely and accurately.
- *Luzum*/unchanged means that each contract is conducted with clear objectives and careful calculations, so as it is avoided the practice of speculation or *maisir*.
- Mutual benefit means that each contract is conducted to meet the interests of the parties, so that it is prevented from manipulation practices and is detrimental to either party.
- *Taswiyah*/equality means that the parties in each contract have equal positions, rights, and obligations

- Transparency means that each contract is conducted with the accountability of the parties openly.
- Ability means that each contract is conducted in accordance with the abilities of the parties, so that it does not become an excessive burden on the parties concerned.
- *Taisir*/easiness means that each contract is conducted by giving each party convenience to be able to carry out this contract in accordance with the agreement.
- Good faith means that a contract conducted in the context of upholding the benefit does not contain elements of entrapment and other bad deeds.
- Halal causes mean that the contract is not against the law or prohibited by law and is not *haram*.

B. Implementation of Health BPJS Linked to Sharia Principles

In the implementation of Health BPJS, basic rules must be followed to guarantee and facilitate health for every society. This can be seen from the provisions of muamalah, among the important things to consider in the implementation of public health insurance is the principle of muamalah law. One of the principles of muamalah law is that muamalah is conducted on the basis of appealing to benefit and rejecting harm. The principle of appealing benefits and rejecting harm is the soul and spirit of the law established by Al-Quran and al-Hadith. Therefore, all forms of muamalah damaging the principle of society life are not justified by Islamic law, that any type of muamalah transaction (contract) must be free from the elements of usury, *najasy*, *ihthikar*, and *gharar* [7].

Other rules that must be considered in the management of public health institutions that are more operational are the prohibitions set out in sharia, namely managing such institutions may not contain elements of *maisir*, *gharar*, and usury.

Gharar (unclear) is each transaction containing unclear and things with some gaps that open up potential conflicts between two parties or one of the parties harmed by Islam by expressly prohibiting *gharar* to anticipate disputes and losses from one party or injustice. Although both parties have even agreed with an unclear contract, Islam still forbids it [8]. *Gharar* means uncertain thing: true or not [7]. *Gharar* sale and purchase is the sale and purchase of uncertain results (regarding the object), because it depends on things that will come or be unknown that something happens or not. The prohibition of *gharar* sale and purchase is based on the hadith: The Prophet (PBUH) prohibited the sale and purchase of throw a pebble, and *gharar* sale and selling. In the Prophet's hadith: "The Prophet (PBUH) had ever passed someone who was selling food, then the Prophet put his hand in the food, then it turned out that the food was a hoax. Hence, the Prophet (PBUH) said: "do not belong to our group, people who cheat".

IV. CONCLUSIONS

Based on the description and analysis above, several conclusions can be drawn as follows:

- That the implementation of the Health BPJS is associated with the balance principle among the interests of the parties in the agreement.
- In the implementation and management of the Health BPJS, if it is seen from the sharia principles, there are elements of *riba* (additional/usury), *maisir* (speculative/chance), and *gharar* (unclear things). This is prohibited in Islam.

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